

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

-against-

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

-against-

Adv. Pro. No. 09-01364 (SMB)

HSBC BANK PLC, et al.,

Defendants.

DISCOVERY ARBITRATOR'S ORDER

The Discovery Arbitrator, having reviewed letters from counsel dated September 28, October 11 and 19, and December 14, 2018, and having conducted a hearing on November 7, 2018, hereby ORDERS as follows:

1. The Trustee shall be permitted to take a Rule 30(b)(6) deposition to explore issues related to the completeness of the document production of defendant Alpha Prime Fund Limited (“Alpha Prime”). This deposition shall be without prejudice to the Trustee’s ability to take a second Rule 30(b)(6) deposition addressing substantive issues, although the Trustee should endeavor to address at the same time any substantive issues that the deponents selected by Alpha Prime may be able to address.
2. Alpha Prime and its counsel shall cooperate with any efforts by the Trustee to enter into an arrangement with HSBC Institutional Services (Bermuda) Limited, HSBC Securities Services of Luxembourg, or related entities regarding the production of documents relevant to this proceeding. As part of that cooperation, should the Trustee so request, Alpha Prime shall inquire as to the precise amount that the HSBC entities contend must be paid to secure the release of Alpha Prime’s documents. Alpha Prime shall also cooperate with any efforts by the Trustee to obtain those documents pursuant to a Request for International Judicial Assistance under the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.
3. Given the alleged absence of metadata from Alpha Prime’s prior production of electronically stored information, Alpha Prime shall produce to an agreed third-party expert the drives on which that information is stored. The expert shall copy any non-privileged information on those drives and produce the resulting copy to the Trustee, but only after affording Alpha Prime a reasonable opportunity to ensure that no privileged information remains on the Trustee’s copy.

4. To the extent that it has not yet done so, Alpha Prime shall confirm that the custodians specified by the Trustee have produced all the responsive non-privileged documents in their custody or control.

SO ORDERED.

Dated: New York, New York
December 17, 2018



Frank Maas
Discovery Arbitrator